STATE OF MICHIGAN

COURT OF APPEALS

FLIGHT ONE, INC., Plaintiff-Appellee,	UNPUBLISHED January 27, 2009
v	No. 280626 Shiawassee Circuit Court
SASCON, INC., and SASCON AVIATION, INC., Defendants-Appellants.	LC No. 06-004072-CZ

Before: Owens, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendants appeal by right the trial court's final judgment entered in favor of plaintiff. Defendants challenge the trial court's conclusion that defendants are jointly and severally liable for the judgment and whether the calculation of damages in the judgment accurately reflects the court's ruling. We affirm.

This case arises out of a purchase agreement between plaintiff, Flight One, Inc. (Flight One), and defendant, Sascon Aviation, Inc. (Sascon Aviation). Sascon Aviation failed to complete the installment payments established by the purchase agreement. Flight One and Sascon Aviation entered into a separate loan agreement for repayment of Sascon Aviation's outstanding obligation, which Sascon Aviation also failed to satisfy. Defendant, Sascon, Inc. (Sascon), guaranteed the payments to Flight One, as required in the purchase agreement. Flight One brought this action against both companies for breach of contract and unjust enrichment. The trial court found in favor of plaintiff and found that defendants were jointly and severally liable for the judgment.

Defendant first argues on appeal that Sascon should not be liable to Flight One because the subsequent loan agreement between Flight One and Sascon Aviation was a novation that extinguished the original purchase agreement, including Sascon's guarantee. We disagree. The trial court's findings of fact are reviewed for clear error, but questions of law are reviewed de novo. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). The proper construction and interpretation of a contract is a question of law. *Bandit Industries, Inc v Hobbs Int'l Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001).

"A novation requires: (1) parties capable of contracting; (2) a valid obligation to be displaced; (3) consent of all parties to the substitution based upon sufficient consideration; and (4) the extinction of the old obligation and the creation of a valid new one." *In re Dissolution of*

F Yeager Bridge & Culvert Co, 150 Mich App 386, 410; 389 NW2d 99 (1986). "The question rests in the intention of the parties as it may be gathered from the surrounding and subsequent circumstances and conduct." *Gorman v Butzel*, 272 Mich 525, 529; 262 NW 302 (1935). There is no dispute that both parties were capable of contracting, the purchase agreement represented a valid obligation, and both parties consented to the loan agreement.

Defendant argues primarily that because the loan agreement adds interest payments to Sascon Aviation's obligation to Flight One, it is materially different from the original purchase agreement, and this is evidence that the parties were intending to extinguish their obligations under the purchase agreement. On the contrary, the loan agreement provides that the debt to be repaid is the same $50,000 owed under the purchase agreement. It is only the means of repayment that provides for interest payments. Further, the loan agreement is much shorter than the purchase agreement and incorporates terms of the purchase agreement without contradicting or changing them. Importantly, the loan agreement incorporates the security terms of the purchase agreement, including Sascon's guarantee. Accordingly, we find that the loan agreement is clearly an attempt to arrange payment of an obligation otherwise established by the purchase agreement. It is not a new, substitute agreement. The trial court did not clearly err.

Defendants further argue that even if the loan agreement is not a novation, Sascon should not be liable for the additional debt Sascon Aviation incurred pursuant to the loan agreement and certificate of repossession. We disagree.

"The goal of contract construction is to determine and enforce the parties' intent on the basis of the plain language of the contract itself." *St Clair Medical, PC v Borgiel*, 270 Mich App 260, 264; 715 NW2d 914 (2006). Further, "[t]he surety has a right to stand on the very terms of the contract. To the extent and in the manner and under the circumstances pointed out in his obligation, the surety is bound, and no further." *Bandit*, *supra* at 511 (equating a guarantor with a surety).

Sascon's letter of guarantee states, *in toto*: "Sascon, Inc. agrees to guarantee Flight One, Inc. the amount of $100,000.00 toward the purchase agreement of Flight One, Inc. assets. Payment of $50,000.00 each will become due May 1, 1997 and May 1, 1998 to complete the agreement." Defendants argue that because it was only the final installment that remained unpaid, Sascon is only liable for the remainder of that payment. The plain language of the agreement states that Sascon agreed to guarantee "the amount of $100,000" toward Sascon Aviation's purchase of Flight One. Sascon Aviation's method of payment was ancillary to this promise. We note, however, that Sascon's liability is limited to $100,000.[1]

Defendants finally argue that the trial court's judgment does not reflect its rulings at trial. Defendants failed to preserve this issue because they did not object to the proposed judgment plaintiff filed within seven days as required by MCR 2.602(B)(3). *Eriksen v Fisher*, 166 Mich App 439, 451; 421 NW2d 193 (1988). This issue is, therefore, reviewed for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

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[1] The judgment against defendants is for $74,923.82.

The difference between the judgment entered against defendants and the judgment defendants allege correctly reflects the court's ruling amounts to one and four-tenths percent of the total judgment of $74.923.82. Moreover, defendant's claim that plaintiff seeded its calculations with the wrong balance is unfounded. The trial court's ruling may have conflicted with the evidence at trial, but the judgment, submitted by plaintiff and signed by the court, accurately reflects the court's ruling. Defendant's other claim regarding the proper method for calculating interest amounts to only a portion of the one and four-tenths percent discrepancy. Thus, any errors between the court's ruling and the court's judgment are too small to amount to plain error.

We affirm.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jane E. Markey